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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 17, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

OLIVER D. RUDY, TRUSTEE OF  
THE FINE CREEK LAND TRUST

and

THE REED'S LANDING CORPORATION,  
PETITIONERS

v.

CASE NO. PUE-2001-00473

SOUTHSIDE ELECTRIC COOPERATIVE,  
DEFENDANTS.

To seek sanctions for alleged  
abuse of authority granted under  
§ 56-49 of the Code of Virginia

FINAL ORDER

On August 24, 2001, Oliver D. Rudy, Trustee of the Fine Creek Land Trust, and the Reed's Landing Corporation ("Petitioners"), filed a Petition with the State Corporation Commission ("Commission") requesting that the Commission, pursuant to § 56-35 of the Code of Virginia ("Code"), find that Southside Electric Cooperative ("Southside" or the "Cooperative") had abused the powers granted to it pursuant to § 56-49 of the Code.

On September 5, 2001, the Commission entered an Order Establishing Procedural Schedule which, among other things, **Effective April 9, 2002, the new Case Management System requires that the case number format for all Commission orders change from, e.g., PUE010663 to the following: PUE-2001-00663.**

assigned the matter to a Hearing Examiner and set dates for the Cooperative to file its Answer to the Petition and for the parties to file a Stipulation of Facts.

On September 10, 2001, Southside filed its Answer and Grounds of Defense which stated that the Petitioners' own exhibits to the Petition established that the Circuit Court of Powhatan County had already decided that the Cooperative had obtained a valid easement for adequate consideration.<sup>1</sup> The Cooperative also raised a number of affirmative defenses and argued that the Petition should be dismissed. The Hearing Examiner entered a Ruling on September 17, 2001, scheduling a public hearing for January 8, 2002, to receive evidence relevant to the issues in dispute, and establishing a procedural schedule for the parties to prefile testimony and exhibits.

The Cooperative filed a Motion for Summary Judgment and Dismissal on October 30, 2001, requesting that the Petition be dismissed. By Hearing Examiner's Ruling entered on November 6, 2001, the Petitioners were provided an opportunity to file a Response to the Motion for Summary Judgment and Dismissal.

On November 19, 2001, the Petitioners filed a Response arguing that their Petition contained specific allegations of

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<sup>1</sup> The Petitioners appealed the Circuit Court of Powhatan County decision to the Supreme Court of Virginia. By Order entered January 9, 2002, the Court found there was no reversible error in the judgment complained of and refused the Petitioners' Petition for Appeal.

misconduct that, if proven, would provide the jurisdictional basis for the Commission to grant the relief provided for in § 56-6 of the Code.<sup>2</sup>

By Hearing Examiner's Ruling entered on November 30, 2001, the Cooperative's Motion for Summary Judgment and Dismissal was denied on the basis that a material question of fact was in dispute.

An evidentiary hearing was convened on January 8, 2002, before Hearing Examiner Michael D. Thomas. Counsel appearing were Oliver D. Rudy, Esquire, on behalf of the Petitioners, John M. Boswell, Esquire, on behalf of Southside, and Sherry H. Bridewell, Esquire, on behalf of the Commission Staff. James K. Timmons, President of The Reed's Landing Corporation, testified on behalf of the Petitioners, and Robert W. Blankenship, Southside's district manager, and Douglas C. Bradbury, a land surveyor and professional engineer, testified on behalf of the Cooperative.

The Hearing Examiner filed his Report, along with a copy of the transcript of the January 8, 2002, hearing on April 10, 2002. The Report contains a detailed summary of the evidence presented at the hearing. The Hearing Examiner noted that,

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<sup>2</sup> Section 56-6 of the Code grants the Commission jurisdiction to enjoin a public service corporation from a particular course of conduct, enjoin obedience to the requirements of Title 56 of the Code, and compel any public service corporation to observe and perform any public duty imposed by the laws of the Commonwealth.

pursuant to 5 VAC 5-20-90 A of the Commission's Rules of Practice and Procedure, the evidentiary standard that must be met before a violation of the Code may be found is "clear and convincing." The Hearing Examiner found that the Petitioners failed to prove by clear and convincing evidence that the Cooperative abused the powers granted to it pursuant to § 56-49 of the Code. After considering the evidence, the Hearing Examiner found that the issues raised in the proceeding are the result of an honest mistake made by Mr. Bradbury of Southside and a lack of communication between Mr. Timmons and his employees. The Hearing Examiner found no evidence of malice or evil intent on the part of the Cooperative to trick, coerce, or otherwise not pay for all the land it needed for its transmission line easement.

Neither the Petitioners nor the Cooperative filed comments on the Report.

NOW THE COMMISSION, having considered the Hearing Examiner's Report, the record, and applicable law, is of the opinion that the Hearing Examiner's finding and recommendation are reasonable and should be adopted.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) The finding and recommendation of the Hearing Examiner, as detailed in his April 6, 2002, Report are hereby adopted.

(2) This case is dismissed from the Commission's docket of active cases and the papers herein placed in the file for ended causes.